

Public Access Adoption and Concurrent Proposal Fact Sheet

Effective December 17, 2007

This fact sheet attempts to summarize the adoption and concurrent proposal for the benefit of the public but in no way overrides, interprets or otherwise modifies the regulations.

BACKGROUND

The Public Trust Doctrine is an extremely important legal principle that helps to maintain public access to and use of tidal waterways and their shores. These waterways and shores are held in trust by the State for the benefit of all of the people, allowing the public to fully enjoy these lands for a variety of uses. Courts have recognized that public uses guaranteed by the Public Trust Doctrine include a variety of modern recreational activities along the various tidal shores.

The Department has [adopted rules](#) that clarify the public's rights to access and use of tidal waterways and their shores, and incorporate standards to maintain these rights on the State's tidal waterways and their shores. The rules are intended to ensure that the public's rights continue to be protected and that improvements are made so that the public has realistic and meaningful opportunities to enjoy the resources. The rules contain standards for coastal development as well as specific standards for municipalities accepting Shore Protection Program funding. In addition, the rules provide public access standards for municipalities, counties and nonprofit organizations wishing to receive funding from the Green Acres Program for projects located along a tidal waterway.

Concurrent with publication of the adoption of the public access rules, the Department is [proposing amendments](#) to the newly adopted Public trust rights rule and the rule containing information requirements for public access plans. The concurrent proposal responds to issues raised on the November 6, 2006 proposal. The concurrent proposal appeared in the December 17, 2007 New Jersey Register to allow for public review and comment. Public hearings are scheduled for January 16 and 17, 2008 and written comments will be accepted until February 15, 2008.

THE ADOPTED RULES:

- Require that development on or adjacent to tidal waterways and their shores provide onsite, permanent, unobstructed access to tidal waterways and their shores at all times, including visual and physical perpendicular and linear access;
- Set forth specific perpendicular and linear access requirements for sites located along the Arthur Kill, Kill Van Kull, Newark Bay, and the Delaware, Elizabeth, Hackensack, Passaic, Rahway and Raritan Rivers, Cohansey River in Bridgeton and Maurice River in Millville;
- Contain standards for fees for public access to or use of public and privately owned beaches, addressing the amount of the fee charged, discrimination and ability of the public to purchase badges or passes;

- Set forth standards relating to the public's ability to access and use tidal waterways and their shores by addressing signage, parking and barrier-free access;
- Require the public access portion of the site to be permanently dedicated for public use through the recording of a department-approved conservation restriction maintaining the publicly dedicated area in perpetuity;
- Set forth public access requirements for municipalities that participate in the State's Shore Protection Program funding; and
- Set forth public access requirements for municipalities, counties, and nonprofit organizations to be eligible for funding under the State's Green Acres Program to acquire or develop a site along a tidal waterway.

Exceptions under the Adopted Rules

Linear access may not always be practicable and circumstances may exist that warrant modification of the location, scope or timing of the public access provision. Therefore, the rule provides exceptions, each with specific criteria, in which modification of the permanent onsite public access requirements of the rule may be allowed, as follows:

- Late night closure where a unique risk associated with late night access is documented. Does not apply on the Arthur Kill, Kill Van Kull, Newark Bay, or the Hudson, Delaware, Elizabeth, Hackensack, Passaic, Rahway or Raritan Rivers, Cohansey River in Bridgeton or Maurice River in Millville;
- Temporary restrictions due to documented exigent circumstances of public safety or security; repair, maintenance or construction; protection of endangered or threatened wildlife or plant species; or protection of critical wildlife resources;
- Alternate on-site or off-site access at an energy facility, industrial use, port use, airport, railroad, or military facility where perpendicular access and/or linear access along the entire shore is not practicable based on the risk of injury from hazardous operations, or due to existing and permanent obstructions, and no measures can be taken to avert these risks;
- Alternate on-site or off-site access for a two or three unit residential development depending on size of the site, character of the waterway, and availability and type of public access in the vicinity. Does not apply on the Arthur Kill, Kill Van Kull, Newark Bay, or the Delaware, Elizabeth, Hackensack, Passaic, Rahway or Raritan Rivers, Cohansey River in Bridgeton or Maurice River in Millville, although walkways on these rivers can be reduced in width. Does not apply on the Hudson River, Atlantic Ocean, Sandy Hook, Raritan or Delaware Bay, nor where beach and dune maintenance are proposed; and
- No public access at a single family home or duplex that is not part of a larger development except for the following:
 - ◆ Public access to and use of the beach required where the home is on the Atlantic Ocean, Sandy Hook, Raritan or Delaware Bay; or on other

waterways if beach or dune maintenance is proposed; no perpendicular access required;

- ◆ Additional requirements may be imposed as a condition of Shore Protection Program funding.

The concurrent proposal described below would provide additional exceptions.

Public Access Requirements for Shore Protection Program Funding

New Jersey's Shore Protection Program administers shore protection projects, including beach nourishment, throughout the state. Projects are funded through either a Federal-State-local cost share or a State-local cost share, with \$25 million available annually for State-sponsored shore protection projects. The following requirements apply to all municipalities that participate in the State's Shore Protection Program funding:

- Prepare and adopt a public access plan for the municipality;
 - Prepare and record a public access instrument and/or conservation restrictions that preserve municipal streets and other public rights-of-way leading to tidal waterways and their shores;
 - Provide public access to all tidal waterways and their shores that are on or adjacent to lands held by the municipality;
 - Ensure that ordinances and activities do not limit access to or use of tidal waterways and their shores or otherwise conflict with the Public Trust Doctrine.
- Municipalities that participate in the State's Shore Protection Program funding for shore protection projects, including beach nourishment projects, along the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay must also provide the following:
 - Public access to and use of the entire project area and all beaches within the municipality along the waterway on which the project will occur, including recording conservation restrictions (the concurrent proposal described below would modify this requirement);
 - Public perpendicular accessways to the project area and all beaches within the municipality along the waterway on which the project occurs at ¼ mile intervals (the concurrent proposal described below would modify this requirement);
 - Public restrooms within the project area and within ¼ mile of the project area at ½ mile intervals; and
 - Parking sufficient to accommodate public demand to access and use the project area and the beach capacity of all beaches within the municipality along that portion of the waterway on which the projects occurs;
 - Municipalities that participate in the State's Shore Protection Program funding for shore protection projects, including beach nourishment projects, along waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay must provide the following:

- Public access for the entire project area including recording conservation restrictions;
- Public accessways to the project area, including perpendicular access at ¼ mile intervals if the project is more than ½ mile long; and
- Parking sufficient to accommodate public demand to access the project area.

Public Access Requirements for Green Acres Program Funding

New Jersey's Green Acres Program provides State funds to acquire and develop lands for recreation and conservation purposes. The Green Acres Local and Nonprofit funding programs provide low interest loans and grants to municipal and county governments and matching grants to nonprofit organizations to acquire open space and develop outdoor recreation facilities. The following requirements must be met for a municipality, county or nonprofit organization to be eligible for funding under the State's Green Acres Program for a site along a tidal waterway:

- Municipalities
 - Prepare and adopt a public access plan for the municipality;
 - Prepare and record an instrument and/or conservation restriction that preserves municipal streets and other public rights-of-way leading to tidal waterways and their shores;
 - Provide public access to all tidal waterways and their shores that are on or adjacent to lands held by the municipality; and
 - Ensure that ordinances and activities do not limit access to or use of tidal waterways and their shores or otherwise conflict with the Public Trust Doctrine;
- Counties and nonprofit organizations
 - Prepare and adopt a public access plan;
 - Ensure that activities (and county ordinances) do not limit access to or use of tidal waterways and their shores or otherwise conflict with the Public Trust Doctrine;
 - Provide public access to all tidal waterways and their shores that are on or adjacent to lands held by the county or nonprofit organization; and
 - Provide at least one public accessway to the tidal waterway, its shore and the project site across land held by the funding recipient.
- The following requirements must be met by all municipalities, counties and nonprofit organizations to be eligible for funding under the State's Green Acres Program for a site along a tidal waterway:
 - Provide public restrooms and parking for the project site if directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and
 - Record a conservation restriction for the project site.

THE CONCURRENT PROPOSAL

The Department is proposing amendments to the newly adopted Public trust rights rule and the rule containing information requirements for public access plans. The proposal responds to issues raised in response to the November 6, 2006 proposal.

The Proposal:

- Adds superhighways to the list of facilities where alternate on-site or off-site access can be provided;
- Adds the following exceptions for marinas:
 - Alternate on-site access at an existing commercial marina where linear access along the entire shore is not practicable based on site constraints. Does not apply to marinas with more than one dwelling unit, or non-marine related commercial uses; and
 - Alternate access route at a marina to avoid forklifts, travel lifts, or other heavy boat moving equipment;
- Adds the following exception for homeland security:
 - Alternate on-site or off-site access where development would impact a facility subject to a federal or State homeland security statute, and perpendicular access and/or linear access along the entire shore is not practicable because it poses an unacceptable homeland security risk;
- Modifies the parking requirement for public road projects that are displacing existing parking used for public access to the water;
- Modifies the requirements for municipalities participating in the State's Shore Protection Program for shore protection projects along the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay:
 - Applies the requirements for conservation restrictions and public accessways only to the area of the shore protection project and, where the project is a structure, the entire beach outshore of that structure, rather than to the entire beach within the municipality; and
- Modifies the timing for submission of the public access plan and public access instrument for eligibility for Green Acres funding.
 - Allows applicants for Green Acres funding to certify that they will meet the requirements of the rule, and submit the information demonstrating compliance after receiving notification that their application for Green Acres funding has been approved.